

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILEDUNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2014 DEC 12 AM 10:53

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UNITED STATES OF AMERICA)

v.)

Case No. 5:10-cr-15

FLOYD ARTIS)

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 245 & 253)

This matter came before the court for a review of the Magistrate Judge's September 23, 2014 Report and Recommendation ("R & R"). Defendant Floyd Artis has filed a motion pursuant to 28 U.S.C. § 2255 that seeks to vacate, set aside, or correct a judgment and sentence imposed by this court on the grounds that he received ineffective assistance of counsel both at the time of his sentencing and on appeal. (Doc. 245.) He argues that his counsel failed to object to a two-level enhancement under § 2D1.1 of the advisory Sentencing Guidelines for possession of a firearm during the conspiracy. The government opposed the motion. (Doc. 252) Neither party has filed an objection to the R & R and the deadline for doing so has passed.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In this case, the Magistrate Judge observed that the firearm was an exhibit at trial and was the subject of several witnesses' testimony who addressed how it was used by Defendant Artis in the conspiracy. There was thus a factual basis for the application of U.S.S.G. §2D1.1(b). The Magistrate Judge further noted that the firearm enhancement did not appear to increase Defendant Artis's sentence as the court imposed a substantially below guidelines sentence under 18 U.S.C. § 3553(a). Defendant Artis therefore could not establish his counsel's performance caused him to suffer any prejudice as required by *Strickland v. Washington*, 466 U.S. 668 (1984). The court finds the Magistrate Judge's conclusions well-reasoned and consistent with the applicable law.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 253), and, accordingly, the court DENIES the Defendant's motion to vacate, and DISMISSES WITHOUT PREJUDICE Defendant's § 2255 motion (Doc. 245).
SO ORDERED.

Dated at Burlington, in the District of Vermont, this 12th day of December, 2014.



Christina Reiss, Chief Judge
United States District Court